

Curling, Donna v. Raffensperger, Brad

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 DONNA CURLING, et al.,

5 Plaintiffs,

6 CIVIL ACTION

7 vs.

FILE NO.: 1:17-CV-2989-AT

8 BRAD RAFFENSPERGER, et al.,

9 Defendants.
10 -----
11
12

13 REMOTE DEPOSITION OF

14 DR. PHILLIP STARK

15 December 16, 2022

16 1:00 p.m.

17
18 (All attendees appeared remotely via
19 videoconferencing and/or teleconferencing)
20
21

22
23 Inger Douglas

24 CVR No. 7481

25 CCR No. 5166-3765-6508-0064

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A P P E A R A N C E S O F C O U N S E L

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Ms. Jenna Conway, Esq.

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Ms. Sonja Swanbech, Esq.

Mr. Richard DeMillo

Ms. Marilyn Marks, Esq.

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I N D E X

DEPONENT:

DR. PHILLIP STARK

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* * *

A T T A C H M E N T S

Certificate

Reporter's Disclosure Statement

* * *

T R A N S C R I P T C O D E S

-- interruption/change in thought

. . . incomplete thought

[sic] denotes word/phrase that may seem strange

or incorrect has been written verbatim

(ph) phonetically spelled

(indiscernible) not capable of being understood

(crosstalk) two or more talking simultaneously

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I N D E X T O E X H I B I T S

Defendant's

Exhibits

Description

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Exhibit 1	Notice of Deposition	6
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1 Q Okay. So it's your understanding that the access
2 to...

3 A The 2020 -- yeah, the 2020 election, so January 2021.
4 I'm sorry. Forgive me. It is 2021.

5 Q Yeah. Okay.

6 A I can't count. That's an occupational hazard as a
7 statistician, so...

8 Q Yeah. It's difficult for a mathematician and a
9 statistician, yeah.

10 A Right.

11 Q At least I can say that as a lawyer that's not a big
12 deal, you know? So you go on to state that those parties had
13 enough access to corrupt the installed software or implant
14 malware on the devices. Do you see that?

15 A Yes, sir.

16 Q Okay. And did you review any of the forensic images
17 taken of the Coffee County election equipment?

18 A I did not.

19 Q Okay. And why not?

20 A It's outside my expertise as regards to this case. I
21 -- there were specific experts looking at that,
22 Mr. Skoglund (ph) and Professor Haldeman (ph).

23 Q Okay. So by extension then, you didn't look at the
24 forensic image to see if anybody actually corrupted the
25 installed software, right?

1 A I did not.

2 Q Okay. And you didn't, you know, look to verify
3 whether anybody actually implanted malware on those devices,
4 right?

5 A I did not.

6 Q Okay. Are you aware of anybody that did look for
7 that?

8 A I understand that, as I mentioned before, Professor
9 Haldeman and Mr. Skoglund examined the images. I don't know
10 whether they specifically looked for malware, but I know that
11 others have examined the images.

12 Q Okay. Are you aware of any individual examining the
13 images or that equipment that has identified either corrupted
14 software or malware in that examination?

15 A I am not aware of that.

16 Q Okay. And just to make sure I'm, you know, covering
17 all bases here, the same question, but -- are you aware of any
18 individual that examined those images or equipment that
19 identified any anomalous operation or malicious code or
20 anything out of the ordinary as far as the operating software
21 on the devices?

22 A I'm hung up a little on anomalous operation because I
23 understand that Mr. Limburg in particular was looking at
24 whether he could generate anomalous operation by changing
25 settings in some of the software. But I -- other than that,

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1 that there wasn't time for him to restore the settings back to
2 what they were before that test. I might be misremembering
3 that, but that's -- that's what I recall.

4 Q Okay. And that's -- when you said he discovered
5 settings, that's him tinkering with it in his own experiment to
6 change the settings, right?

7 A That's my understanding, yes.

8 Q Okay. And so just so that I understand your
9 testimony here, you're not offering an opinion that any party
10 corrupted the installed software or implanted malware on the
11 devices, right?

12 A No, sir. The point of those paragraphs is really
13 that there was an opportunity to, not that it, in fact,
14 happened, and that this may indicate that there could be other
15 opportunities, too, in other jurisdictions within Georgia.

16 Q Okay. And so the next sentence there, you state that
17 you "understand Sullivan-Strickland" -- excuse me --
18 "Sullivan-Strickler copied all the digital information from
19 (imaged the drives of many pieces of equipment) and posted
20 images to a ShareFile site online." So this image made by
21 Sullivan-Strickler falls in the category of things you -- you
22 did not personally review, right?

23 A Correct. Yes, sir, I did not.

24 Q And then, you go on to talk about what I think you've
25 alluded to earlier here today. "I understand that an unknown

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1 concern your view on audits and a purported vulnerability
2 called DVSorder. Is that generally accurate?

3 A Yes, sir. A little bit of specific information about
4 the audit of the Secretary of State's contest.

5 Q Okay. All right. So if you'll scroll maybe to
6 paragraph five, this is -- let's see. I think it's the third
7 page of the declaration.

8 A Yes, sir.

9 Q You state there, "No audit can reliably determine
10 whether BMDs altered enough votes to change who appeared to
11 win." Do you see that?

12 A Yes, sir.

13 Q Okay. So do I understand this correctly to mean that
14 in your opinion, even if the State did everything, you know,
15 precisely as you recommend as far as procedure in here that the
16 audit would essentially be worthless because it's -- the
17 election was conducted on BMDs; is that accurate?

18 A I've -- it's a bit of an overstatement. I wouldn't
19 say it's entirely worthless. But it couldn't limit the risk
20 that an incorrect electoral outcome would be certified because
21 there are ways in which the outcome could be altered that no
22 audit could detect. In particular, malware or malfunctioning
23 or misconfiguration of BMDs could cause the BMDs to print
24 different votes from what the voters actually selected, and
25 there would be no way for an audit to detect that that

1 happened.

2 Q Okay. So the point is that you can have an audit,
3 but it wouldn't be risk-limiting; is that accurate?

4 A Yes, sir. There are aspects of the election that you
5 could check by auditing. But ultimately, you could not check
6 the correctness of the outcome of the election.

7 Q Okay. So there is still some value in doing those
8 audit procedures even if you're utilizing a BMD, right?

9 A If they're done correctly, yes.

10 Q Okay. And is there some value in utilizing audit
11 procedures more generally -- strike that. Is there some value
12 in utilizing audit procedures generally even if it might not
13 align to a statewide, jurisdiction-wide, risk-limiting audit?

14 A There is some value and there's also -- there is also
15 some danger in that it's an invitation to draw erroneous
16 conclusions. In particular, the Secretary of State's Office
17 has advertised that these audits have demonstrated that the
18 equipment functioned correctly, that the results are accurate,
19 and that the reported winners really did win. And the audits
20 don't, in fact, show those things. So I think that there's a
21 danger of misinterpreting the result of applying some of these
22 procedures to an untrustworthy paper trail.

23 Q Okay. And so then, in paragraph six you also -- what
24 I gather in this paragraph, you also state the opinion that
25 essentially even a hand-marked paper ballot, risk-limiting

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1 audit in Georgia would be insufficient, right?

2 A Absent some changes to procedures; in particular,
3 around the security -- physical security of the voted ballots
4 and physical accounting for ballots, checks of chain of
5 custody, and things of that kind.

6 Q Okay. But you specifically say in the last sentence
7 that, "Thus, any audit that Georgia might perform cannot
8 protect against the possibility that the Coffee County breach
9 resulted in changed election outcomes in Coffee County or other
10 counties," right?

11 A Yes, sir. But there's a first sentence about the
12 lack of physical accounting controls, et cetera. If those
13 controls were there, then my conclusion in the second sentence
14 would be different.

15 Q Okay. And we'll get to those controls here. I do
16 want to note -- go briefly to paragraph eight.

17 A Yes, sir.

18 Q You say basically you haven't had adequate time to
19 digest the details nor to search exhaustively, right?

20 A Yes, sir.

21 Q And then, you go on to provide plenty of additional,
22 you know, opinion testimony on this. But what exactly have you
23 reviewed in relation to risk-limiting audits that you were
24 relying on for this declaration?

25 A I have the PowerPoint slides from a presentation

1 writing this report.

2 Q Okay. So what you were just referencing there in
3 terms of the statute, you didn't go back and, you know, look at
4 that for writing this report, you know, in a close period of
5 time to submitting it?

6 A No, sir.

7 Q Okay. And you didn't personally observe any audit
8 being conducted by county officials in Georgia, right?

9 A Correct. I did not.

10 Q And you are aware that the county officials are the
11 ones that carry out the audits in Georgia, right?

12 A That they are responsible for it. They presumably
13 have other people on the ground doing the work, but yes.

14 Q Sure. Okay. All right. So I want to just break
15 these items down quickly here that you list in paragraph ten.
16 I thought it was sort of a synopsis to some of the things you
17 wanted to go to later in the declaration. But mandatory ballot
18 accounting, what do you mean by that?

19 A Keeping track of how many pieces of paper go to each
20 polling place, how many come back voted, spoiled, or unvoted.
21 In the case of BMDs, it would be keeping track of the blank
22 stock that the printouts are on, crosschecking that against the
23 number of people who checked in to vote, and for the
24 registration numbers, participation records, and so on.
25 Largely physical accounting.

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1 A I'm not, but that's true in most places.

2 Q Okay. And with respect to the poll book
3 reconciliation, you're aware that that's required as part of
4 the tabulation process in Georgia, right?

5 A No, I'm not aware of that. My understanding -- and
6 I'm not an expert on law. But my reading of that regulation or
7 statute was that it doesn't happen at the time of tabulation;
8 that it is required to happen within something like 30 days
9 after the election.

10 Q Okay. So you're not doubting me that that is, in
11 fact, a requirement, right?

12 A I have no reason to doubt whether it's a requirement.
13 I would have reason to doubt whether it's enforced, given the
14 number of ballots or ballot scans that were discovered after
15 the 2020 election never to have been uploaded into the system
16 in the first machine tabulation, and given another omission. I
17 can't recall which county it was in here where some -- some
18 number of the Cobb County memory card hadn't been uploaded into
19 the voting system. That's in paragraph 12.

20 Q Okay. So -- and this is the distinction that I'm
21 trying to make sure I understand. Are you offering an opinion
22 as to whether state law or regulation itself is adequate or
23 that based on observation of county procedures under such law
24 or regulation that they're not adhering to a regulation?

25 A So I'm not an attorney. I won't pretend to be able

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1 to interpret the law. But regardless of what the law says, it
2 seems that this isn't happening in practice, at least not that
3 well.

4 Q Okay. Have you ever seen a polling place recap form?

5 A A polling place what form?

6 Q Recap form?

7 A No, sir.

8 Q Okay. Would you have any reason to doubt me that
9 these are standard forms compiled as part of the tabulation
10 process?

11 A I'm not familiar with that -- with the term "recap
12 form". It's possible that I have seen such a form but don't
13 know it by that name. But I have no reason to doubt what
14 you're telling me.

15 (Defendant's Exhibit No. 3 was identified.)

16 BY MR. MILLER:

17 Q Okay. And I'm going to mark another exhibit for you
18 here. And just let me know when you see it on your end.

19 A I have it.

20 Q Okay. Have you seen this regulation before?

21 A No, sir.

22 Q Okay. And you see at the top it says 183-1-12-.12?

23 A Yes, sir.

24 Q And it's entitled Tabulating Results, right?

25 A Yes.

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1 Q Okay. So if you'll -- with this in mind concerning
2 the tabulation timeframe, if you'll turn back with me to your
3 declaration? And if you'll scroll with me down to the
4 appendix? So when you reviewed these documents, did you notice
5 polling place reconciliation procedures -- or I'm sorry.
6 Strike that. When you reviewed this -- these documents in your
7 appendix, did you notice items concerning polling pad or voter
8 check-in reconciliation procedures?

9 A I noticed a reference to comparing the check-ins to
10 the number of ballots in the batch according to the batch
11 inventory, and language that said if there was a large
12 difference it should be reported to the Secretary of State.

13 Q Okay. So if you'll scroll with me to Page 26 of the
14 PDF, Exhibit 2? I'm sorry. I don't think they've got page
15 numbers at the bottom, so you have to kind of rely on the...

16 A Are you talking about Appendix B, Page 4 of 4?

17 Q I'm sorry. Page 3 of 4?

18 A Okay.

19 Q And you see here the last sentence of that first
20 paragraph? And this is talking about the ballot inventory
21 worksheet. It reads, "Each section of the worksheet should be
22 reviewed carefully and compared to voter check-in data." Do
23 you see that?

24 A Yes, sir.

25 Q Okay. And it goes on under the Section 1 heading to

1 say, "Verify these totals match your known voter totals."

2 A Yes, sir.

3 Q Okay. So this is the second phase of polling pad
4 reconciliation as I see it. Is that consistent with what you
5 were referring to as polling pad reconciliation?

6 A Poll book reconciliation. It -- this is part of poll
7 book reconciliation. It is happening rather late in the
8 process after the ballot manifest has already been constructed
9 rather than basing the ballot manifest on the physical count
10 and this reconciliation. Moreover, if the steps that you
11 pointed out in the -- regarding the recap form had, in fact,
12 taken place, then this would appear to be redundant, not that
13 redundant checks are -- aren't valuable.

14 Q You anticipated my next question.

15 A Yeah.

16 Q Redundancy, as I've heard in this case, is a valuable
17 tool to use, right?

18 A Yes, I agree.

19 Q Okay. And in fact, there's a -- if you'll scroll
20 with me to Page 37 -- I'm sorry -- Page 36 of the PDF?

21 A Thirty-six is the ballot inventory tool of what you
22 will generate?

23 Q Yes.

24 A Yes.

25 Q And you see there in italics, it's emphasized at the

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1 end, you know, "Remember it's up to you to ensure all of your
2 votes have been uploaded to the RTR system. The system will
3 not check that for you." Do you see that?

4 A Yes, sir.

5 Q Okay. And then, if you continue scrolling down to
6 Page 44 of the -- Exhibit 2?

7 A Forty-four, the batch inventory tool?

8 Q Yeah. It's a screenshot of an Excel sheet. Do you
9 see that?

10 A Yes, sir.

11 Q Yeah. And it says there in the instructions on the
12 Excel sheet, "Compare the cast vote record ballot count for
13 each ballot group to your voter check-in data." Do you see
14 that?

15 A Yes, sir.

16 Q Okay. So the next thing in your -- there are a
17 category of items in the declaration. I saw a concern about
18 chain of custody checks.

19 A Yes, sir.

20 Q Okay. And what do you mean by that? And I'll
21 qualify that question to say: Are you referring to chain of
22 custody checks at the polling place or during the audit process
23 or both?

24 A Chain of custody checks throughout the election and
25 the audit to ensure that the paper trail is trustworthy

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1 MR. MILLER: Yeah. I apologize for that.

2 BY MR. MILLER:

3 Q You see there the first bullet? "The check-in and
4 check-out clerk should refer to the appropriate documentation
5 to verify the chain of custody of each secure container prior
6 to removing it from the check-in and out station."

7 A Yes, sir, I see that.

8 Q Okay. And it talks there specifically about
9 verifying the seals on the container with the check-in and out
10 clerk before signing the chain of custody form.

11 A Yes, sir.

12 Q Okay. So you're aware that during the audit process,
13 state regulation and the Secretary's directives require the
14 ballots to be sealed when they arrive at the location where the
15 audit is occurring and to be unsealed and resealed as each
16 container is checked out, right?

17 A You told me that they're required to be sealed in the
18 polling place, and this says that the seal should be checked
19 when they're opened again for the audit. Yes.

20 Q Okay. And then, after the audit of a particular
21 container or a tally of a particular container -- if you'll
22 scroll with me to Page 62? You see there that, "Upon check-in,
23 the check-in and out clerk will have the total number of
24 ballots in the batch manifest and is comparing that to the
25 audit team's total number of ballots counted"?

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1 batch. And therefore, there's no way for the tool to
2 discover whether a discrepancy matters or the measured
3 risk.

4 BY MR. MILLER:

5 Q Okay. So your concern is with the entry fields of
6 Arlo or with the verification by the check-in and out clerk of
7 the total number of ballots counted?

8 A My concern is with the fact that discrepancies
9 between the number of ballots according to the voting system
10 and the number of ballots found by the audit team are not taken
11 into account in determining whether the risk limit has been
12 met.

13 Q So lastly, I want to ask you about eligibility
14 auditing. And this is another term that was referenced in your
15 paragraph ten.

16 A Yes, sir.

17 Q By this, do you mean whether a voter was eligible to
18 cast a ballot; like, for instance, was a challenged voter or
19 not on the registration list?

20 A In general, I mean, double-checks of the
21 determinations of the eligibility of voters. This is a concern
22 both for polling place and for vote by mail. Just confirmed --
23 you know, double-checking signature verification in some way to
24 -- for quality control purposes.

25 Q Okay. But you're not offering an opinion in this

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1 declaration on Georgia procedures concerning the verification
2 and counting of provisional ballots, right?

3 A No, sir. I -- not specifically, but in general, the
4 processes that are in place to ensure that every eligible voter
5 has the opportunity to vote and no one who is not eligible, in
6 fact, votes and those who are eligible to vote are given a
7 ballot of the appropriate style that contains exactly those
8 contests that they're eligible to vote in are all processes
9 that are subject to some error and need to be vetted as part of
10 an audit or as precursor to a risk-limiting audit.

11 Q Okay. Yeah. I'm not sure that that was the question
12 that I asked, though helpful, but in your declaration here,
13 you're not offering an opinion on, say, provisional ballot
14 procedures, right?

15 A It would be subsumed into the general issue of
16 eligibility auditing. The resolution of provisional ballots
17 and the determination of whether they should or should not be
18 counted is a process that should be checked as part of a
19 compliance audit.

20 Q Okay. So you're not saying that it's not done; you
21 just would like to see an additional -- a redundant
22 double-check as a compliance audit?

23 MR. BROWN: Object to form.

24 THE WITNESS: Yes, sir.

25 BY MR. MILLER:

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1 A I'm sorry. I did testify that I did not, yes.

2 Q That -- thank you for clarifying that. And -- but I
3 understood you testified that Mr. Skoglund and Dr. Haldeman
4 did?

5 A That's my understanding, yes.

6 Q Okay. And in their review, are you aware of any
7 evidence that votes cast on that equipment were not cast as
8 intended?

9 A I am not aware of any evidence that the machine
10 misbehaved in practice in any way.

11 Q Okay. And are you aware of any evidence of machines
12 in Coffee County or elsewhere in Georgia did not cast votes as
13 intended subsequent to the unauthorized access in Coffee
14 County?

15 A Could would be a little bit more specific? Are we
16 talking about ballot marking devices? I mean, the issue with
17 ballot marking devices is I'm not aware of any evidence that
18 they printed selections other than what the voters intended.
19 But the problem with ballot marking devices is that they don't
20 generate any evidence of printing selections other than what
21 the voters intended. So there's just a security gap there,
22 which is one of my biggest concerns with the widespread
23 reliance on BMDs. But I am not aware of any evidence of
24 misbehavior of BMDs. I'm not aware of any evidence of
25 misbehavior of the tabulators. I am aware of evidence of

1 procedural lapses of various kinds.

2 Q Okay. I think that satisfies my question there. And
3 you're not offering an opinion that the incorrect winner was
4 certified in any Georgia election, right?

5 A I'm offering no such opinion.

6 Q Okay.

7 A I would have no basis for any such opinion.

8 MR. MILLER: Okay. That's all the questions I have.

9 Mr. Brown or Mr. Cross may have some for you.

10 E X A M I N A T I O N

11 BY MR. BROWN:

12 Q Dr. Stark, Bruce Brown representing the Coalition
13 Plaintiffs. Thank you for your testimony today. I just have a
14 couple of questions. You testified as to when you started to
15 put pen to paper on your declaration and -- but you also
16 collected some documents in advance of that, correct?

17 A Yes, sir. I'm trying to think of specifically which
18 ones, but I've been -- I've been following the developments in
19 the case including attending the depositions that are referred
20 to. And I was certainly collecting thoughts and making notes
21 anticipating that I might be asked to write a supplementary
22 declaration. But I didn't start to really draft it until
23 approximately December 1. I believe that was, I think, the
24 Thursday or Friday of that week.

25 Q Okay. And then, you -- and you participated or at

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CERTIFICATE

STATE OF GEORGIA

COUNTY OF FORSYTH

I, Inger Douglas, Certified Court Reporter, hereby certify that the foregoing pages numbered 2 through 59 constitute a true, correct, and accurate transcript of the testimony heard before me, an officer duly authorized to administer oaths, and was transcribed under my supervision.

I further certify that I am a disinterested party to this action and that I am neither of kin nor counsel to any of the parties hereto.

In witness whereof, I hereby affix my hand on this the 20th day of December 2022.



Inger Douglas, CVR 7481

CCR 5166-3765-6508-0064

Certified Court Reporter